IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOM W. PARSON
221 Beidler Road
King of Prussia, PA 19406

Plaintiff,

vs.

THE VANGUARD GROUP
400 Devon Park Drive
Wayne, PA 19087-1815

Defendant.

NO. ______________________

CIVIL ACTION

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, by and through his undersigned counsel, hereby files the following Complaint against Defendant:

INTRODUCTION

1. Plaintiff, Thom W. Parson (hereinafter "Plaintiff"), initiates this action to seek redress against the Defendant for unlawful age and race discrimination in violation federal and state law.

JURISDICTION and VENUE

2. All of the allegations contained in the foregoing paragraphs of this Complaint are incorporated by reference herein as if the same were set forth at length.

3. The Court may properly maintain personal jurisdiction over the Defendant because the Defendant's contacts with this state and this judicial

district are sufficient for the exercise of jurisdiction over the Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the Supreme Court of the United States in International Shoe Co. v. Washington, 326 U.S. 310 (1945) and its progeny.

4. The United States District Court for the Eastern District of Pennsylvania may exercise original subject-matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of civil rights.

5. The Court may also maintain supplemental jurisdiction over state law claims set forth herein pursuant to 28 U.S.C. § 1367(a) and Rule 18(a) of the Federal Rules of Civil Procedure because they are sufficiently related to one or more claims within the Court's original jurisdiction in that they form part of the same case or controversy.

6. Venue is properly laid in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2) because the Defendant is located in and conducts business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

PARTIES

7. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

8. Plaintiff is an adult individual residing at the above address.

9. Defendant is believed to be a Pennsylvania corporation with a principal place of business at the above address.

10. At all times relevant herein, Defendant acted or failed to act through its agents, servants and employees, each of whom was in the scope of their employment at all times relevant herein.

11. Defendant is an "employer" within the meaning of Title VII because it is engaged in an industry affecting interstate commerce and because they maintained or maintain fifteen (15) or more employees for each working day in each of twenty (20) or more weeks in the current or preceding calendar year.

12. The Defendant is an "employer" within the meaning of the ADEA because it is engaged in an industry affecting interstate commerce and because it maintains or maintained twenty (20) or more employees for each working day in each of twenty (20) or more weeks in the current or preceding calendar year.

13. Defendant also maintains a sufficient number of employees to satisfy the jurisdictional prerequisites of the Pennsylvania Human Relations Act (requiring four or more employees).

PROCEDURAL and ADMINISTRATIVE REMEDIES

14. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

15. Plaintiff has satisfied the procedural and administrative requirements for proceeding under Title VII, the Age Discrimination in Employment Act of 1967 ("ADEA") and the Pennsylvania Human Relations Act ("PHRA") as follows:

a) On or about October 9, 2014, Plaintiff filed a timely written charge of discrimination against Defendant (No. 530-2015-01588) with the Equal Employment Opportunity Commission and Pennsylvania Human Relations Commission alleging discrimination and retaliation;

b) The Equal Employment Opportunity Commission mailed a Notice of Right to Sue on the foregoing charge on or about April 29, 2015;

c) The instant action is timely because it is initiated within ninety (90) days of the receipt of the aforementioned Notice;

16. Plaintiff has exhausted his federal and state administrative remedies as to the allegations of this Complaint.

FACTUAL BACKGROUND

17. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

18. Plaintiff was employed with Defendant from approximately November 17, 1987 until May 12, 2014 when he was pretextually and unlawfully terminated.

19. Plaintiff is an African-American.

20. Plaintiff's date of birth is October 11, 1962.

21. Plaintiff was unlawfully terminated after 26 years of service.

22. Plaintiff was told he was being terminated for unsatisfactory performance.

23. This occurred, despite the fact that Plaintiff had 14 years of positive year end appraisals.

24. Plaintiff was deliberately and willfully singled out due to his race and his age.

25. Plaintiff was not given opportunities to be crossed trained.

26. Plaintiff and another African-American Associate were the only two out of approximately 24 Associates, similarly situated who were not given these opportunities.

27. In or around July or August of 2013, Plaintiff requested a meeting with his Supervisor (Angela Rodden) to discuss time off that he needed.

28. Plaintiff was surprised she used this time, instead of a regularly scheduled monthly one on one meeting, to discuss how Defendant is changing and finished with something to the effect of "and Vanguard may not be the place for your type."

29. Upon information and belief, this was a reference to Plaintiff's race and/or age.

30. At Defendant, there is a culture wherein employees succeed or fail based on their productivity and quality average.

31. Upon information and belief, Defendant uses a system called Horizon to calculate these numbers and Defendant claims the system never makes mistakes.

32. In or around September of 2013, Plaintiff noticed a blatant mistake on his monthly numbers.

33. Plaintiff documented the mistake on his monthly one on one questionnaire.

34. Plaintiff's act of "documenting" the mistake seemed to anger his Supervisor Angela Rodden as she updated his personal appraisal and blamed Plaintiff for mistakes he had never made.

35. In fact, Plaintiff was the one who corrected the mistake.

36. Rodden failed to and refused to acknowledge and correct the significant Horizon mistake.

37. Upon information and belief, the Horizon calculating system had been used to fire individuals and force three older Associates to retire early and Plaintiff was subjected to a significant manipulation of the system.

38. On or about October 4, 2013, Plaintiff was sent an email from Rodden questioning him on an item he was working on and falsely accusing him about how this was apparently the third time she had to remind him of a certain procedure.

39. Plaintiff respectfully responded by e-mail letting Rodden know she was wrong.

40. After Plaintiff brought to her attention both mistakes, she wrote Plaintiff up on a performance alert for competencies.

41. Upon information and belief, Defendant's procedure is supposed to be an oral warning prior to a written warning.

42. Plaintiff was never given the oral warning.

43. Even more confusing were Plaintiff's impressive rates, documented from January 1, 2013 through October 31, 2013, which never supported the characterization that he was an incompetent processor.

44. Plaintiff was surprised when he walked into a conference room and the manager was there with his supervisor.

45. Upon information and belief, Defendant always uses productivity to target someone but Plaintiff was clearly more than competent, so they had great difficulty.

46. In or around 2013, Defendant stated they would be relying heavily on competencies and possibly do away with productivity numbers.

47. Upon information and belief, Defendant did so because competencies are subjective, but productivity is not.

48. Plaintiff was supposed to meet once a week to discuss his work.

49. However, in October, November and December of 2013 there were no meetings scheduled because Plaintiff's work was solid.

50. Rodden instead decided to extend the performance alert based on a few questionable items.

51. A new Supervisor, Tony Perilli, came in November of 2013 and met with a number of employees individually.

52. Perilli said to Plaintiff that it was easy to see that he was heavily burdened and noticed Plaintiff did not communicate.

53. Perilli told Plaintiff that going through all this difficulty would not be worth it to his health.

54. Upon information and belief, his exact words were "If I were you, I would go to HR."

55. Mysteriously, at the same time, Plaintiff noticed a drop in his productivity numbers.

56. By the time January of 2014 had come about, there was a very strange and drastic drop in Plaintiff's productivity.

57. Plaintiff's productivity rate had declined from January of 2013 through October of 2013 (which was over 99%) to an immediate drop of 60%.

58. Plaintiff's January 2014 Horizon reports posted a never before record low percentage of 40% and even a 17%.

59. Perilli pressed Plaintiff for answers as to what was going on.

60. Plaintiff told Perilli that he was processing exactly as he always had and told him something was wrong with the system.

61. He assured Plaintiff nothing was wrong.

62. At this time, Plaintiff began to believe he was deliberately manipulating his numbers.

63. Plaintiff continually expressed there was no way the numbers were correct.

64. At this time, Perilli said he spoke with Plaintiff's former supervisor (Angela Rodden) who agreed with Plaintiff and told him that Plaintiff's productivity was never that low.

65. Plaintiff was told by Perilli that he would have to contact the HR Representative along with the Manager to let them know about his "productivity failure", since that was a major part of his competencies.

66. In Perilli's words; "I don't know Thom, they may want to move forward with termination."

67. When Plaintiff questioned the accuracy of the numbers, he told Plaintiff they were accurate but he knew Perilli was wrong.

68. Plaintiff was under enormous pressure and emotional stress as a result.

69. It did not matter how hard Plaintiff worked, his productivity numbers were still extremely and inaccurately low.

70. In or around March of 2014, Plaintiff finally found proof his productivity was being manipulated to give the appearance he was failing miserably.

71. For approximately four months Defendant was doubling Plaintiff's normal work day of 7.50 hours to read 15.00 hours.

72. Defendant had Plaintiff working 7.50 hours a day then doing nothing for 7.50 hours a day.

73. Horizon had calculated Plaintiff's work week production at 75 hours instead of 37.50.

74. Upon information and belief, Perilli or someone else was deliberately entering bogus information.

75. When Plaintiff shared his findings with his supervisor, he stopped sending Plaintiff his Horizon rates altogether through email and no longer provided Plaintiff with anything pertaining to this situation.

76. Plaintiff was being retaliated against and ignored.

77. In or around April of 2014, Plaintiff decided to raise the issue with Perilli.

78. Plaintiff sent three polite emails detailing how he had solved the productivity problem and requested meetings with him to discuss.

79. He never responded.

80. Shortly after he realized Plaintiff knew what was going on he called a conference room meeting and told Plaintiff that his Horizon situation was taken off the table and apparently would not count against him with the competency write up.

81. However, Plaintiff had been set up, lied to for months and was significantly stressed and emotionally exhausted.

82. In or around May of 2014, Plaintiff was fired shortly after disclosing his findings.

83. Upon information and belief, Defendant has fired six African Americans and forced five African Americans, within Plaintiff's department alone, into early retirement after over 30 years of service.

COUNT I
Title VII Race Discrimination and Retaliation

84. All of the allegations contained in the foregoing paragraphs of this Complaint are incorporated by reference herein as if the same were set forth at length.

85. The foregoing conduct by the Defendant constitutes unlawful discrimination against the Plaintiff on the basis of his race.

86. The foregoing conduct by the Defendant constitutes unlawful retaliation against the Plaintiff.

87. Alternatively, pursuant to Fed.R.Civ.P. 8(d)(2), the Defendant's policies and procedures have a disparate impact on African American employees such as Plaintiff.

88. Alternatively, pursuant to Fed.R.Civ.P. 8(d)(2), the Defendant created a hostile work environment for the Plaintiff on the basis of his race.

89. As a result of the Defendant's unlawful discrimination and retaliation, the Plaintiff has suffered damages as set forth herein.

COUNT II
VIOLATIONS OF 42 U.S.C. § 1981

90. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

91. At all times relevant herein, Plaintiff maintained or sought to maintain a contractual relationship with Defendant.

92. The substantive elements of racial discrimination claims are the same as those brought pursuant to Title VII of the Civil Rights Act.

93. At all times relevant herein, Defendant acted by and through its agents, servants, and employees to intentionally discriminate against Plaintiff as a result of his race (African-American) and thereby deny him the benefits of the contractual relationship he had entered or sought to enter with Defendant.

94. Alternatively, pursuant to Fed.R.Civ.P. 8(d)(2), the Defendant's policies and procedures have a disparate impact on African American employees such as Plaintiff.

95. Alternatively, pursuant to Fed.R.Civ.P. 8(d)(2), the Defendant created a hostile work environment for the Plaintiff on the basis of his race.

96. At all times relevant herein, Defendant acted by and through its agents, servants, and employees to intentionally retaliate against Plaintiff as a result of his engagement in protected activity and thereby deny him the benefits of the contractual relationship she had entered or sought to enter

with Defendant. *See* CBOCS West, Inc., v. Hedrick G. Humphries, 553 U.S. 442 (2008).

97. Plaintiff suffered adverse employment actions insofar as he was terminated and otherwise treated differently because of his race and his engagement in protected activity.

98. Plaintiff has suffered damages as a direct result of Defendant's unlawful actions.

COUNT III
ADEA Age Discrimination and Retaliation

99. All of the allegations contained in the foregoing paragraphs of this Complaint are incorporated by reference herein as if the same were set forth at length.

100. By virtue of his age, the Plaintiff is in the class of persons protected by the ADEA.

101. The foregoing conduct constitutes unlawful age discrimination against the Plaintiff.

102. The foregoing conduct constitutes unlawful retaliation against the Plaintiff.

103. As a result of the Defendant's unlawful age discrimination and retaliation, the Plaintiff has suffered damages as set forth herein.

COUNT IV
Pennsylvania Human Relations Act

104. All of the allegations contained in the foregoing paragraphs of this Complaint are incorporated by reference herein as if the same were set forth at length.

105. The foregoing discrimination and retaliation by Defendant also violates the Pennsylvania Human Relations Act, 43 P.S. § 951, *et seq.*

106. As a result of Defendant's violations of the Pennsylvania Human Relations Act, Plaintiff has suffered damages, as set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor and against Defendant and that it enter an Order providing that:

a. Defendant is to be permanently enjoined from discriminating or retaliating against Plaintiff on any basis prohibited under applicable federal and state law;

b. Defendant is to be prohibited from continuing to maintain its illegal policy, practice, or custom of discriminating or retaliating against employees based on any basis prohibited under applicable federal and state law and be ordered to promulgate an effective policy against such discrimination and to adhere thereto;

c. Defendant is to compensate Plaintiff, reimburse Plaintiff, and to make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, medical and other benefits, training, promotions, pension, and seniority. Plaintiff should be accorded those benefits illegally withheld from the date he first suffered discrimination at the hands of Defendant until the date of verdict;

d. Plaintiff is to be awarded actual damages, as well as damages for the pain, suffering, and humiliation caused to him by Defendant's actions as permitted by applicable law;

e. Plaintiff is to be awarded punitive damages as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious, and outrageous conduct, and to deter Defendant or any other employees from engaging in such misconduct in the future;

f. Plaintiff is to be accorded any and all other equitable and legal relief as the Court deems just, proper, and appropriate including but not limited to reinstatement;

g. Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal and state law;

h. Any verdict in favor of Plaintiff is to be molded by the Court to maximize the financial recovery available to Plaintiff in light of the caps on certain damages set forth in applicable federal law;

i. Plaintiff is to be granted such additional injunctive or other relief as he may request during the pendency of this action in an effort to ensure Defendant does not engage – or ceases engaging - in illegal retaliation against Plaintiff or other witnesses to this action;

j. The Court is to maintain jurisdiction of this action after verdict to ensure compliance with its Orders therein;

k. Plaintiff is to be accorded any and all other statutory damages the Court deems just, proper, and appropriate;

l. Plaintiff's claims are to receive a trial by jury to the extent allowed by applicable law. Plaintiff has also endorsed this demand on the caption of the Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

KOLMAN ELY, P.C.

____

Wayne A. Ely, Esquire
W. Charles Sipio, Esquire
Timothy M. Kolman, Esquire
414 Hulmeville Avenue
Penndel, PA 19047
(T) 215-750-3134 / (F) 215-750-3138

Attorneys for Plaintiff

Dated: July 16, 2015